

AUGUSTINE V. MANZANARES ET AL.

IBLA 84-186

Decided June 26, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. CA MC 39616 and CA MC 72504.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), where the owner failed to file with BLM either evidence of annual assessment work or a notice of intention to hold the claim prior to December 31 of each calendar year.

2. Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The presumption that BLM employees have not lost or misplaced evidence of annual assessment work for an unpatented mining claim, required to be filed under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), will not be overcome by an uncorroborated statement that the document was mailed.

APPEARANCES: A. V. Manzanares, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Augustine V. Manzanares and others 1/ have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated

1/ The other appellants, co-owners of the claims involved herein, are Richard H. and Lucille L. Ellison, William F. and Wynona E. Lloyd, and Elsie E. Manzanares.

November 29, 1983, declaring the Golden Dream Mine and the Golden Dream No. 2 lode mining claims, CA MC 39616 and CA MC 72504, abandoned and void for failure to file with BLM either evidence of annual assessment work or notice of intention to hold the claims on or before December 30, 1982, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). 2/

Appellants' mining claims were located in Shasta County, California, on October 12, 1973 (Golden Dream Mine), 3/ and July 7, 1980 (Golden Dream No. 2), and recorded with BLM, respectively, on October 3, 1979, and September 25, 1980, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). The record indicates affidavits of assessment work for the claims were filed timely, with BLM every year between the year of recordation and 1983, with the exception of 1982. See 43 U.S.C. § 1744(a) (1982). The affidavit of assessment work for 1982, which was filed with the Shasta County recorder on August 30, 1982, was filed with BLM on December 8, 1983.

In their statement of reasons for appeal, appellants contend that the affidavit of assessment work was "mailed to your office on time" and that they have done the assessment work and filed the appropriate affidavit every year, including 1982.

[1] Under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), the owner of an unpatented mining claim must "file" with BLM either evidence of annual assessment work or a notice of intention to hold the claim "prior to December 31" of each calendar year following the date of first filing such an instrument (claims located on or before October 21, 1976) and "prior to December 31" of each calendar year following the calendar year in which the claim was located (claims located after October 21, 1976). Accordingly, appellants were required to file their evidence of annual assessment work for 1982 prior to December 31, 1982. Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a).

We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse

2/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

3/ The Golden Dream Mine claim was originally named the Golden Dream No. 1 claim. On Apr. 19, 1974, appellants amended the claim and renamed the claim the Golden Dream Mine. Both the original and amended notices of location were filed for recordation with BLM on Oct. 3, 1979. The record indicates that appellants amended the Golden Dream Mine claim again on Aug. 6, 1980, and filed the amended notice of location with BLM on Dec. 8, 1983.

noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon a failure to comply with the statutory filing requirement, the Department does not have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules of abandonment. This holding was recently affirmed in United States v. Locke, supra at 1795-96. Thus, it is irrelevant whether appellants intended to abandon the claims involved herein.

[2] Appellants, however, assert they complied with the statutory filing requirement by mailing to BLM evidence of annual assessment work for 1982 previously filed with the county. Under the applicable regulation, 43 CFR 3833.0-5(m), "file" is defined to mean "being received and date stamped by the proper BLM office." Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). 4/ Thus, in order to conclude that a document was filed with BLM in accordance with 43 U.S.C. § 1744(a) (1982), there must be proof that the document was actually received by BLM. Homestake Mining Co., supra.

In the present case, BLM has apparently searched its records and been unable to discover the evidence of annual assessment work purportedly filed by appellants. 5/ In such circumstances, relying on the presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties, it is presumed BLM employees did not lose or misplace the documents and that they were never received. S. H. Partners, 80 IBLA 153 (1984), and cases cited therein. The presumption may be rebutted by convincing and uncontradicted evidence "which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference." John Walter Starks, 55 IBLA 266, 270 (1981), appeal dismissed, Starks v. Watt, Civ. No. 81-0711 (C.D. Utah Mar. 2, 1982); see Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985).

However, an uncorroborated statement to the effect that a document was mailed with no proof that it was received by BLM will not overcome the presumption that BLM did not lose or misplace the document. S. H. Partners, supra; see Wilson v. Hodel, supra. Accordingly, appellants have not overcome the presumption that the evidence of annual assessment work for the claims involved herein, although recorded with the county, was not filed with BLM.

The only filing of the required document with BLM evident in the record is the December 8, 1983, filing, well after the statutory deadline. In such

4/ However, for purposes of receipt by BLM of annual filings of evidence of assessment work or notice of intention to hold a claim, the term "timely filed" includes such documents mailed and postmarked within the statutory period (on or before Dec. 30) and received by the following Jan. 19. 43 CFR 3833.0-5(m).

5/ The record contains a handwritten note by a BLM employee, dated Dec. 14, 1983, which states that proofs of labor were received for 1979, 1980, 1981, and 1983. The note further indicates that a check of the records of other claims recorded by appellants, other claims bearing the name Golden Dream Mine, and filings which were inadequately identified by the filing party also failed to locate the 1982 proof of labor for appellants' claims.

circumstances, we conclude that BLM properly declared appellants' mining claims abandoned and void. Edmund J. Cowan, 76 IBLA 257 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

